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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Professional Landscape Management Services, Inc.

File: B-286612

Date: December 22, 2000

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.
J. Randolph MacPherson, Esq., Sullivan & Worcester, for Environmental Resources Group, Inc., an intervenor.
Stephanie Foster, Esq., Sharon Roach, Esq., and Edith L. Toms, Esq., General Services Administration, Public Buildings Service, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although agency incorrectly evaluated proposals as either acceptable or unacceptable--rather than on a comparative basis--under best value evaluation scheme, and then made award based on low price, award decision was unobjectionable where contemporaneous record shows that all offerors' technical proposals were of equal merit, as confirmed by agency's post-protest scoring of offerors' past performance information.

DECISION

Professional Landscape Management Services, Inc. (PLMS) protests the award of a contract to Environmental Resources Group, Inc. (ERG) under request for proposals (RFP) No. GS11P00ZCD0155, issued by the General Services Administration (GSA), Public Buildings Service, for landscape maintenance services. PLMS asserts that the evaluation was inconsistent with the RFP and unreasonable, and that discussions were inadequate.

We deny the protest.

The RFP sought proposals for all labor, materials, tools, equipment, and services necessary for complete landscape maintenance services, including snow and ice removal, around various buildings at two Maryland sites, the Suitland Federal Center

and Bowie Computer Facility.¹ Offerors submitted fixed monthly pricing for each service for a performance period of a base year, with 4 option years. Offers were to be evaluated on the basis of two equally weighted factors: technical, consisting of experience and past performance on similar projects, and price. With regard to the technical factor, offerors were required to submit five references for similar projects performed by the offeror during the past 7 years. Award was to be made to the offeror whose proposal was most advantageous, *i.e.*, the best value to the government, considering the technical and price factors.

Four offerors, including PLMS and ERG, submitted proposals by the September 15, 2000 closing time. In evaluating these proposals, the evaluators contacted the references submitted by each offeror to obtain answers to seven questions.² The evaluators successfully contacted five of ERG's references and four of PLMS's. The responses from the references were all positive and similar in nature and, in accordance with the source selection plan--which provided for ratings of either acceptable or unacceptable--both proposals were evaluated as acceptable. PLMS's price was lowest overall and approximately \$900 below ERG's.

Based on this initial evaluation, the agency determined to conduct discussions with all offerors. In discussions with PLMS, the agency advised the firm that all references were acceptable and all reviews received were "good," but because only three references were for general landscape services, it asked PLMS to submit two additional references related to landscaping. The agency also noted that PLMS's pricing was low in comparison to other offers received and advised PLMS to review its pricing to ensure that everything was included. The agency similarly advised ERG that its price was low compared to other offers received and the government estimate, and that it should review its proposal to ensure that everything was included.

¹ This requirement was originally solicited under an invitation for bids (IFB) in October 1999. ERG was the low bidder in that procurement. However, GSA failed to synopsise the procurement in the Commerce Business Daily and PLMS protested to the agency on this ground. The agency took corrective action by canceling the IFB. ERG then protested the agency's action to our Office, but we dismissed the protest as untimely filed (B-285621, Aug. 22, 2000). Because ERG's and other firms' pricing had been revealed at bid opening, GSA decided to resolicit using negotiated procedures.

² The seven questions covered the following areas: (1) type and size (acreage) of facility; (2) time frame of the contract; (3) dollar amount; (4) overall rating of performance on a 1 (poor) to 5 (excellent) scale; (5) timeliness of performance; (6) any problems with performance; and (7) positive or negative performance factors regarding personnel qualifications and performance.

In its revised proposal, PLMS included two additional references and raised its overall prices for each year to a total of \$365,476. The agency was unable to contact either of the references, and thus decided to rely upon PLMS's initial evaluation under the technical factor. ERG increased its annual prices to a total of \$348,218 per year, approximately \$17,000 below PLMS's price. In their final report, the evaluators recommended award to ERG based on the fact that both PLMS's and ERG's proposals were acceptable and the fact that ERG's price was lower. Agency Report (AR), Tab 13, Final Evaluation Report. Further, citing ERG's 6.5 years of experience in landscape maintenance at the Suitland Federal Center, its favorable reference rating for that work, and ERG's "considerable knowledge of the requirements of this contract," the contracting officer determined that ERG's price was fair and reasonable and that award to ERG was in the best interests of the government. AR, Tab 13, Final Price Analysis.

PLMS maintains that the agency improperly changed the award basis from best value to low price/technically acceptable, resulting in price being the sole evaluation factor. The agency denies that it intended to make an award on a low price/technically acceptable basis, but concedes that it improperly used only two adjectival ratings--acceptable and unacceptable--in rating the proposals under the technical factor. In response to the protest, the agency rated the proposals numerically based on the original narratives for each performance-related question on the past performance reference checks. GSA maintains that the resulting scores demonstrate that all offerors' proposals in fact were technically equivalent, and that ERG's low price therefore made its proposal the best value. In its comments in response to the agency's report, PLMS asserts that this "after-the-fact scheme" is not a proper basis for finding the evaluation reasonable.

In reviewing an agency's evaluation of proposals and source selection decision, we will determine whether the agency acted reasonably and consistent with the stated evaluation factors. The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 3; PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 4. The protester is correct that the RFP did not provide for selection of the lowest-priced, technically acceptable proposal, so that a selection on that basis would be improper.

Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, we agree with the agency that the proposals were effectively found to be equivalent in technical merit; once that was true, there was no impropriety in selection based on low price, so that the protester's chances of receiving the award were not hurt by the agency's deviation from the RFP selection criteria. See Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332 at 5.

In this regard, while we generally accord greater weight to contemporaneous evidence of an evaluation and source selection decision, we will consider post-protest explanations that provide a rationale for contemporaneous conclusions, so long as those explanations are credible and consistent with the contemporaneous record. Jason Assocs. Corp., B-278689 *et al.*, Mar. 2, 1998, 98-1 CPD ¶ 67 at 6; ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 6.

Here, we conclude that the contemporaneous record supports the agency's post-protest position that the proposals in fact were equivalent under the technical factor. Specifically, the reference check questionnaires reflected that the protester and the awardee both had relevant landscape experience on projects of size and scope similar to that encompassed by the RFP, and contained uniformly positive narrative statements concerning their actual performance. For example, with regard to timeliness of performance, one of ERG's references stated it was "always prompt [and] performed within the scope of work," and one of PLMS's references stated that it was "always timely--quick response from [named individual]." AR, Tab 6 at 1, 8. With regard to positive and negative performance factors, the same references stated that ERG's "[p]ersonnel are very good listeners, dedicated to their projects, and willing to do and be better in their field of work" and for PLMS's stated that there were "no negatives[:] very pleased with contractor." *Id.*

The agency's after-the-fact scoring is thus wholly consistent with the contemporaneous record--and thus is entitled to weight in our review--and the methodology used appears reasonable. The numerical scale applied (1--poor to 5--excellent) was the same one used on the reference forms to rate overall performance. In applying this scale, the agency rated positive comments such as "good employees, responsive" and "good personnel," as well as affirmative responses regarding timeliness and absence of performance problems, as 5s. To arrive at a final numerical score for each offeror, the agency averaged the scores for each of the four performance questions.³ PLMS's proposal received an average of 4.5 for overall performance and an average of 5 for the other three questions, resulting in a final numerical rating of 19.5. ERG's proposal received an average of 4.3 for overall performance, and an average of 5 for the other three questions, resulting in a final numerical rating of 19.3. The contracting officer concluded that these scores indicated that the proposals were technically equivalent.

PLMS asserts that, even accepting the agency's post hoc scoring, its proposal should have been considered technically superior to ERG's since its scores were higher than ERG's; PLMS concludes that the contracting officer improperly failed to perform a price/technical tradeoff to determine whether the superiority of PLMS's proposal was worth its higher price.

³ Any reference that failed to provide a response was not included in the final average.

The relevant consideration in assessing the impact of evaluation scores on an evaluation is not the difference in the scores, per se, but the contracting agency's judgment concerning the significance of that difference; evaluation scores are merely guides for the source selection authority. Research Triangle Inst., B-278254, Jan. 12, 1998, 98-1 CPD ¶ 22 at 6. Here, the scores not only are very close in absolute terms (.2 points apart), but the contracting officer concluded that the scores show that the proposals are equivalent technically, in other words, that PLMS's .2-point scoring advantage is not meaningful. Contracting Officer's Statement ¶ 22. This being the case, and since, as we have found, the scores accurately reflect the contemporaneous record, there simply is no basis for us to question the contracting officer's determination. It follows that it was reasonable for the agency to proceed with award to ERG based on its low price, without conducting a tradeoff (although we note that the contracting officer actually concluded that the marginally higher score for PLMS's proposal would not merit the payment of an additional \$17,000 per year. Id. at 9).

Our conclusion is not changed by PLMS's assertion that the agency improperly failed to contact the additional two references it submitted at the agency's request; according to PLMS, considering these references would have resulted in a higher evaluation score for PLMS. This argument is without merit. There is no legal requirement that all past performance references listed in an offeror's proposal be checked or included in a past performance evaluation. See Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8; Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407 at 3. In any case, even if the agency had contacted the additional references and each had provided "perfect" responses, this would have increased PLMS's overall score by only .5 points, to 19.8. We find nothing unreasonable in the contracting officer's assessment that the remaining difference between the protester's and awardee's technical scores still would not be so significant as to change the award decision. Contracting Officer's Statement at 9.

Finally, PLMS asserts that it was misled into raising its price by the agency's statement during discussions that PLMS's "price was low and . . . should be specifically reconsidered." Protest at 2. This argument is unpersuasive. While an agency may not coerce or mislead an offeror into raising its price, Research Analysis and Maintenance, Inc., B-272261, B-272261.2, Sept. 18, 1996, 96-2 CPD ¶ 131 at 11, GSA did not do that here. Rather, the agency's statements (to both the protester and the awardee) merely reflected its reasonable concern that, because PLMS's and ERG's prices were low compared to the other prices received, they might not include enough to cover the cost of performing all requirements. Each offeror was simply given the opportunity to review its pricing; that PLMS chose to raise its price reflects the exercise of the firm's business judgment, not improper conduct by the agency.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel